an automobile is to be put, once it has left his hands. Consequently, the other rule would seriously interfere with the conditional sale of automobiles. Sales of this kind have become so widespread that such interference would work undue hardship upon the public in general, and particularly upon automobile dealers and banks who make loans upon such security. Furthermore, by placing the burden of proving innocence upon the plaintiff, any advantage which might be given to illicit dealers is offset and there is no serious hindrance to the enforcement of the prohibition statutes.

TORTS—ASSAULT—SURGICAL OPERATION ON MINOR WITHOUT CONSENT OF PARENT.—The plaintiff sued the defendant under a "Wrongful Death Act" for the death of his eleven-year-old daughter caused by an operation performed without his consent. The daughter, in the temporary custody of her adult sister, was brought to the defendant, who performed an operation, for the removal of diseased tonsils and adenoids, which resulted in her death while under the influence of the anaesthetic. *Held,* that the plaintiff should recover, because there was no evidence showing the immediate need of the operation, and because the operation amounted to an assault for which the child could have recovered had she survived. *Moss et al. v. Rishworth* (1920, Tex. Com. App.) 222 S. W. 225.

There is a scarcity of authority on the particular point in question, but the general proposition is that a surgeon is under a duty not to operate on a patient without his consent, express or implied. *Mohr v. Williams* (1905) 95 Minn. 261, 104 N. W. 12, 1 L. R. A. (N. S.) 439, note; *Pratt v. Davis* (1906) 224 Ill. 300, 79 N. E. 562, 8 Ann. Cas. 197, note. Generally an operation on an infant requires the consent of the parent as well as that of the infant. 21 R. C. L. 393. There is a case, however, where the court held that consent of the parent was not necessary, but that the infant's consent alone was sufficient. *Bakker v. Welsh* (1906) 144 Mich. 632, 108 N. W. 94, 8 Ann. Cas. 195, note. The court, in this case, based its decision chiefly on the fact that the parent could easily have been presumed to have knowledge of the operation, as the child went home for a few days between the consultation with the surgeon and the day of the operation. The fact that the infant was seventeen years of age and therefore mentally competent to decide, was also mentioned as a ground for its decision. There is an analogous case where it was held that a husband's consent was not necessary in a suit under a "Wrongful Death Act" for performing an operation on his wife, who was mentally competent to decide, without his consent. *State v. Housekeeper* (1889) 70 Md. 162, 16 Atl. 382. But see also *Pratt v. Davis, supra.* It does not follow that an infant's consent is sufficient even where such infant is mentally competent to decide, as the distinction between the relationships is obvious. There is, however, one class of cases where it has been held that a surgeon may perform an operation on an infant without the parent's consent, namely where an immediate operation is necessary to save the infant's life. *Luka v. Lowrie* (1912) 171 Mich. 122, 136 N. W. 1106. In cases of this kind the courts, chiefly on the grounds of public policy, "imply" the parent's consent. The fact that the operation was a minor one and that the father was easily accessible, confirms the correctness of the instant case. The surgeon could easily have waited till the parent's consent was obtained without endangering the infant's life in the least.

TORTS—CONTRIBUTORY NEGLIGENCE—ANIMALS ON RAILROADS AND HIGHWAYS.—The plaintiff's mule was struck by one of the defendant's engines in a jurisdiction where neither railroads nor cattle owners are under a duty to fence their lands. The engine, equipped with an electric headlight, was on a straight track, and the mules could have been seen by the engine crew if they had kept a

lookout. It appeared that the fireman called to the engineer that they were about to run into some stock, and the latter slackened his speed until a mule was seen to leave the track, when steam was again turned to the engine. An action was brought to recover for the death of a mule which was struck. *Held,* that the plaintiff should recover, and that the amount of damages should not be reduced in the proportion in which the act of the animal contributed to the injury, because the comparative negligence statute had no application to injury to personal property. *Henderson & Mathis v. Hine* (1920, Miss.) 83 So. 589.

By what seems the weight of authority, it is the duty of those in charge of locomotives to keep a reasonable lookout for live stock on or near the tracks, not merely to exercise care after discovery to prevent injury thereto. *Mobile and G. R. R. v. Caldwell* (1888) 83 Ala. 196, 3 So. 445; *Gulf, etc., R. R. v. Washington* (1892, C. C. A. 8th) 49 Fed. 347; see 24 L. R. A. (N. S.) 858, note. This seems to be the better rule, certainly where the presence of animals is to be anticipated, as where fields are unfenced. Greater liability is imposed if the animal is led to the track by attractive substances negligently exposed. *Crafton v. Hannibal & St. Joseph R. R.* (1874) 55 Mo. 580; *Page v. North Carolina R. R.* (1874) 71 N. C. 222. But the railroad's first duty is to passengers and that is paramount to their duty to avoid injury to animals on or near the track. *Kirk v. Norfolk & W. R. R.* (1896) 41 W. Va. 722, 24 S. E. 639; *Bemis v. Conn. & P. R. R.* (1869) 42 Vt. 375. When animals have been discovered in time to avoid collision, blowing the whistle is not ordinarily enough; the train should be brought to a stop if there is a reasonable apprehension that the animal will stay on, or go upon the track. *Grimmell v. Chicago etc. R. R.* (1887) 73 Iowa 93, 34 N. W. 758; *Little Rock etc. R. R. v. Trotter* (1881) 37 Ark. 593. It is a matter of common experience that such classes of personal property as dogs and fowl will generally hurry to safety on the mere blowing of a whistle. So it is not necessary for the engine to come to a dead stop, where such an animal appears to be able to get off the track. *Moore v. Charlotte etc. R. R.* (1904) 136 N. C. 554, 48 S. E. 822; *Richardson v. Florida, etc. R. R.* (1899) 55 S. C. 334, 33 S. E. 466; *Lewis v. N. S. R. R.* (1913) 163 N. C. 33, 79 S. E. 283; *contra, James v. A. C. L. R. R.* (1914) 166 N. C. 572, 82 S. E. 1026. The duty of an automobilist in regard to animals in the highway presents a somewhat different question, for he can stop more quickly or swerve to one side of the road. *Cf. James v. Railroad, supra.* Some jurisdictions have by legislation made it a nuisance *per se* to allow certain animals at large in the highway, thus destroying this duty to stop. See (1916) 26 YALE LAW JOURNAL, 250; see (1920) 29 *ibid.*, 466. However, the courts uniformly avoid saying that there can be negligence by animals. They prefer to regard only the amount of fault in the defendant, measured by the intelligence and agility of which each class of animals is capable.

TORTS—NEGLIGENCE—BUSINESS VISITORS—RECOVERY BY FIREMAN FOR INJURY.—The defendant brewery had constructed across its property a paved driveway leading to a stable in the rear. This driveway was used by the defendant and by those who had business with it. Back one hundred and fifty feet from the street, across half of this pavement, ran an unguarded coal hole. The plaintiff was chief of the local fire department. A fire occurred on the premises at night and the plaintiff, while answering the alarm, fell into the coal hole and sustained the injuries for which this action was brought. *Held,* that the plaintiff should recover, because he had a privilege to be on the premises and the defendant owed him a duty to use reasonable care in keeping the premises safe. Hiscock, C. J. Collins and Elkus, J. J. *dissenting. Meiers v. Fred Koch Brewery* (1920, N. Y.) 127 N. E. 491.

Persons who enter land on ordinary business at the express or implied invitation of the owner have a right to be protected against unsafe conditions of the